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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,596	01/23/2004	J. Burford Fields	1001.001.00/US	8990
41894	7590	09/01/2005	EXAMINER LE, HUYEN D	
WALTER D. FIELDS FIELDS IP, PS 601 MAIN STREET SUITE 405 VANCOUVER, WA 98660			ART UNIT 3751	PAPER NUMBER

DATE MAILED: 09/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/764,596

Applicant(s)

FIELDS, J. BURFORD

Examiner

Huyen Le

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-18, 20-28, 33, 34, 39-41 is/are rejected.
- 7) ☒ Claim(s) 4, 19, 29-32 and 35-38 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 01/23/2004.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to because In Figure 2, numeral 22 should be changed to 24 and numeral 24 should be 22. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the banister being "hingely connected to the inside" must be shown or the feature(s) canceled from the

Art Unit: 3751

claim(s). The bathing apparatus being "substantially circular" or "pentagonal" must be shown or the features canceled from the claims. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The disclosure is objected to because of the following informalities: page 4, paragraph [0027], line 3, distal end "22" should be changed to --24--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 3751

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
6. Claim 1 recites the limitation "the lower portion" in line 11. There is insufficient antecedent basis for this limitation in the claim.
7. Claim 12 recites the limitations "the upper portion" and "the lower portion" in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim.
8. Regarding claims 10, 24 and 41, the phrase "the same height above the ground level as a wheel chair seat" renders the claim indefinite because it is unclear as to what the height of a wheel chair seat is.
9. Regarding claim 27, it is unclear as to what applicant means by "the height of the descending portion gradually increasing as the descending portion extends from about the upper rim toward the floor".

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1, 3, 5-13, 16, 18, 20-28, 33, 39, 40 are rejected under 35 U.S.C. 102(b) as being anticipated by O'Brien (4,734,944).

The O'Brien reference discloses a bathing apparatus comprising a bathtub 10 having an inside for receiving a bather for bathing a the inside comprising a floor, and a left wall corresponding to a ramp adjacent to the floor; the ramp (left wall) sloping to the floor (as shown in FIG 2 and 3), the ramp having a distal end with respect to the floor; a banister 20 connected to the bathtub 10 and extending from approximately the distal end of the ramp over a substantial length of the floor, the banister 20 comprising a descending portion 24 and a substantially level portion 38 adjacent to the descending portion 24, the descending portion 24 having a slope, the he level portion 38 being "substantially" horizontal with respect to the vertical; the level portion 38 having an upper surface and a length, the height of the upper surface from the floor and the length of the upper surface being suitable for a bather to sit on the upper surface.

Regarding claim 3, the banister 20 is fixedly connected to the inside.

Regarding claim 5, the bathing apparatus comprises an enlarged portion 30 of the level portion 38 extending in part out of the upper surface.

Regarding claim 6, the enlarged portion 30 is located at the end of the upper surface farthest from the descending portion 24.

Regarding to claims 7 and 21, the upper surface's height is less than the height of the inside (reaching the rim 12).

Regarding claims 8 and 22, the distance of the upper surface 38 from the floor changes along the length of the level portion.

Regarding claims 9 and 23, a part of the upper surface 38 curves in the direction of the floor.

Regarding claim 11, the bathing apparatus further comprises portion 26 constituting extensions from the level portion 38 for providing support to the limbs (thighs) of the bather.

Regarding claim 12 as best understood, an upper portion 32 is steeper than a lower portion 34.

Regarding claims 20 and 25, the bathing apparatus comprises an upper surface of the level portion 38, a part of the level portion extending in a curved manner forming an enlarged portion 30 of the level portion

Regarding claim 26, the descending portion 24 arises out of the ramp by descending less quickly than the ramp.

Regarding claim 27, the bathing apparatus comprises a first sub-region 14, a second sub-region 18 and third sub-region 20; the third sub-region 20 commencing about a rim 12 and extending substantially into the floor and having a descending portion 24; the substantially level portion 38 having an upper surface, the height and length of the level portion 38 capable of allowing a bather to sit on the upper surface with the feet extending toward or resting on the floor.

Regarding claim 28, the bathing apparatus comprises a surface contoured to define sidewalls and a floor to a primary reservoir; a banister 20 disposed between the sidewalls and standing between the left and right sidewalls to divide the primary reservoir into left and right sub-reservoir regions 14 and 18; the banister 20 including as sloped portion 24 and a platform portion 38 extending inwardly from the sloped portion 24.

Regarding claim 33, the banister 20 comprises sidewalls constituting means for supporting the sloped portion 24 and the platform portion 38 relative to the floor of the primary reservoir 10.

Regarding claims 39, 40, the rear sidewall (left wall as looking at FIG 2 and 3) of the bathing apparatus 10 comprising a base region that meets the floor, and an upper region 12 at an elevation related to a depth for the primary reservoir, and a sloped portion 24 of the banister 20 meets the upper region of the rear sidewall.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 2, 17 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brien (4,734,944) in view of Adams et al (5,494,718).

Although the O'Brien reference does not disclose that the bathing apparatus include a drain and the floor sloping toward the drain, such features are known in the art. Attention is directed to the Adams et al reference which discloses a bathtub comprising a drain 4 and a sloped floor 1c.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide a drain and modify the floor of the O'Brien bathing apparatus to include a slope surface in view of the teaching of the Adams et al reference for facilitating draining the tub.

14. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brien (4,734,944).

Although the O'Brien reference does not disclose that the bathtub is substantially circular or pentagonal, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to configure the O'Brien tub to a circular shape or other shape, wherein so doing would be a matter obvious design choice.

Allowable Subject Matter

15. Claims 4, 19, 29-32 and 35-38 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Jadkowski, Eppler, Wood and Raphael et al disclose a tub having a ramp and a banister.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3751

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HL
August 31, 2005



Huyen Le
Examiner
Art Unit 3751